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IN RE APPLICATION OF   :

YASUSHI KATAYAMA   : EXAMINER: MUSA, ABDELNABI O.

SERIAL NO: 10/501,082   :

FILED: JULY 9, 2004   : GROUP ART UNIT: 2446

FOR: INFORMATION PROCESSING   :
APPARATUS AND METHOD, AND
COMPUTER PROGRAM

APPEAL BRIEF WITH APPENDICES

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

This appeal brief is submitted in response to the Final Rejection dated September 26,

2008 and is appropriate because claims in the application are at least twice rejected.

I.   Real Party in Interest

The real party in interest in this appeal is the assignee, Sony Corporation.

II.   Related Appeals and Interferences

Appellant, Appellant's legal representatives, and the assignees are not aware of any

appeals or interferences which will directly affect or be directly affected by this appeal or

have a bearing on the Board's decision in this appeal.

III.   Status of Claims

Claims 9, 11, 12, 21, 23, 24, and 27 are pending in this case. Claims 9, 11, 12, 21, 23, 24, and 27 have been finally rejected and form the basis for this appeal. Claims 1-8, 10, 13-20, 22, 25, and 26 were canceled. The attached Claim Appendix includes a clean copy of appealed Claims 9, 11, 12, 21, 23, 24, and 27.

IV.   Status of Amendments

An amendment was filed on December 2, 2008 and resulted in an Advisory Action dated December 19, 2008. The Advisory Action indicated that the Request for Reconsideration under 37 C.F.R. § 1.116 had been considered but did not place the application in condition for allowance for the reasons noted on page 2. No amendments have been submitted after issuance of the Advisory Action.

V.   Summary of Claimed Subject Matter[1]

The three independent claims, Claims 9, 21, and 27 are summarized below with support for the claim elements indicated in parentheses.

(INDEPENDENT CLAIM 9): An information processing apparatus comprising a data reception unit (Fig. 3, 204; page 30, lines 19-23) a rule decision processing unit (Fig. 3, 201; page 30, lines 19-23) configured to determine whether data processing based on a data processing request received via the data reception unit is to be executed (Fig. 3, 204; page 31,

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[1] It is Appellants' understanding that, under the rules of practice before the Board of Patent Appeals and Interferences, 37 C.F.R. § 41.37(c) requires that a concise explanation of the subject matter recited in each independent claim be provided with reference to the specification by page and line numbers and to the drawings by reference characters. However, Applicants' compliance with such requirements anywhere in this document should in no way be interpreted as limiting the scope of the invention recited in all pending claims. Further, references to the specification and drawings are only exemplary and do not include every instance of support in the specification for claimed subject matter.

line 22, to page 32, line 3) and a data processing unit configured to execute data processing

based on the determination of the rule decision processing unit (Fig. 3, 202; page 30, lines

19-23) wherein the rule decision processing unit is configured to execute determination

processing for determining whether or not the processing according to the processing request

is to be executed based on a rule deciding condition descriptor, and the rule deciding

condition descriptor is determined based on a probability value (Fig. 3, 204; page 31, line 22,

to page 32, line 3).

(INDEPENDENT CLAIM 21): A data processing method for analyzing a data

processing request received via a data reception unit, and for determining whether the data

processing request is to be executed, comprising a rule decision processing step for

determining whether data processing based on the data processing request is to be executed

(Fig. 8, S104; page 38, line 20, to page 39, line 9) and a data processing step for executing

data processing based on the determination of the rule decision processing step (Fig. 8, S105;

page 39, lines 20-27) wherein the rule decision processing step determines whether or not the

processing according to the processing request is to be executed based on a rule deciding

condition descriptor, and the rule deciding condition descriptor is determined based on a

probability value (Fig. 8, S104; page 38, line 20, to page 39, line 9).

(INDEPENDENT CLAIM 27): A computer-readable storage medium (Fig. 20, 902;

page 61, lines 3-5) including a computer program for analyzing a data processing request

received via a data reception unit, and for determining whether the data processing request is

to be executed, , wherein, the computer program, when executed by a processor (Fig. 20, 901;

page 61, lines 1-3), causes the process to perform a method comprising a rule decision

processing step for determining whether the data processing based on the data processing

request is to be executed (Fig. 8, S104; page 38, line 20, to page 39, line 9) and a data

processing step for executing the data processing based on the determination of the rule

decision processing step (Fig. 8, S105; page 39, lines 20-27) wherein the rule decision

processing step determines whether or not the processing according to the processing request

is to be executed based on a rule deciding condition descriptor, and the rule deciding

condition descriptor is determined based on a probability value (Fig. 8, S104; page 38, line

20, to page 39, line 9).

VI.   Grounds of Rejection to be Reviewed on Appeal

The only ground to be considered on appeal is whether Claims 9, 11, 12, 21, 23, 24,

and 27 are patentable over Abe, et al. (U.S. Pub. No. 2002/0069408, herein "Abe") in view of

Freed, et al. (U.S. Patent No. 7,073,055, herein "Freed") under 35 U.S.C. § 103(a).

VII.   Argument

With respect to Claim 9, the Office Action dated September 26, 2008 asserts Abe as

teaching every element of the claim except "*specifics* on processing information determined

by the rule decision unit from the data processing unit to the data reception unit in servers or

computer networks," which it asserts Freed as teaching. However, because Claim 9 does not

recite servers or computer networks at all, Abe is considered to be relied on for every recited

feature of Claim 9, and the rejection appears to be erroneously issued under 35 U.S.C. § 103

rather than under 35 U.S.C. § 102.

The Office Action of September 26, 2008 asserts the access site information retrieval

unit 355, depicted at Fig. 4 of Abe, as teaching a data reception unit as defined by Claim 9;

the request 350c, made at step S470 at Fig. 8 of Abe, or the information request fee at step

S413 at Fig. 2 of Abe, as teaching the processing request as defined by Claim 9; the rule

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decision unit 22, depicted at Fig. 10 of Abe and making up a part of the CM detection unit

352 of Abe, as teaching a rule decision processing unit as defined by Claim 9; and the

processor 44, described at paragraph [0258] of Abe as having the functions of the CM

candidate detector 19, supplementary condition calculation unit 20, supplementary condition

decision unit 21, rule decision unit 22, and CM probability database 103, as teaching the data

processing unit as defined by Claim 9.

Based on the specific assertions listed above, Abe anticipates or obviates Claim 9 **if**

the rule decision unit 22 of Abe is "configured to determine whether data processing based

on" request 350c or the information request fee at step S413 "received via" access site

information retrieval unit 355 "is to be executed…based on a rule deciding condition

descriptor…the rule deciding condition description is determined based on a probability

value."

However, the request 350c, described at paragraph [0083] of Abe and made at step

S470 of Fig. 8, is processed by the access site information retrieval unit 355 with no

determination by the rule decision unit 22 based on the request 350c. Specifically, paragraph

[0083] describes that, based on the request 350c, the access site information retrieval unit 355

either outputs information indicating that the requested CM access site information has not

been registered or outputs the access site information 355a.

The request at step S413 of Abe is described at paragraphs [0069] and [0070] as

related to the above discussion of request 350c and is also processed without a determination

by the rule decision unit 22. If the access site information retrieval unit 355 outputs access

site information 355a to the consumer terminal 303, the consumer terminal 303 is billed,

which is why step S413 is labeled as the information request fee step S413 at Fig. 2. Most

significantly, paragraph [0070] of Abe describes that the "retrieval of the access site

information corresponding to the information request at step **S413** is made automatically by

the access site information furnishing device **305**."

Thus, whether referred to as the request 350*c*, the request at step S470, or the request

at step S413, none of these requests teaches a data processing request as defined by Claim 9.

Even if, *arguendo*, an information request can reasonably be interpreted to teach a data

processing request, none of the request 350*c*, the request at step S470, or the request at step

S413 teaches a data processing request for which <u>Abe</u> teaches a "unit configured to determine

whether data processing based on a data processing request…is to be executed," as recited by

Claim 9. Instead, as discussed above, the request 350*c*, the request at step S470, and the

request at step S413 are all information requests which are always processed without a

determination of whether they should be processed.

<u>Abe</u> fails to teach or suggest other features of Claim 9, as well.

The rule decision unit 22 of <u>Abe</u>, which is asserted to teach a rule decision processing

unit as defined by Claim 9, does not, in fact, "determine whether processing based on a data

processing request received via the data reception unit is to be executed." In addition to the

rule decision unit 22 of <u>Abe</u> not making a determination based on the request 350*c*, the

request at step S470, or the request at step S413, asserted to teach the data processing request

as defined by Claim 9, the rule decision unit 22 does not determine whether processing is to

be executed at all.

As depicted at Fig. 6 and described at paragraphs [0080]-[0083] of <u>Abe</u>, the

tuning/demodulation device 351 separates a received RF signal into a speech signal/video

signal/control signal 351a; the CM detection unit 352 then extracts the commercial portion of

the aired signal; and the coordinating unit 353 determines if the extracted commercial

portion coincides with a registered CM in the CM database unit 354. This CM database unit

354 is also accessed by the access site information retrieval unit 355 to process the request

350*c* discussed above. The rule decision unit 22 is part of the CM detection unit 352. As described at paragraph [0205] of <u>Abe</u>, "the rule decision unit 22 decides by rule processing which one of the plural concurrent CM candidates is most probable as the CM."

The Office Action of September 26, 2008 asserts that the decision regarding a given CM by the rule decision unit 22, namely the determination of whether a given CM from a candidate list is to be extracted as the commercial content or not when more than one candidate is identified, as depicted at Fig. 19, teaches a unit "configured to determine whether data processing based on a data processing request received via the data reception unit is to be executed." However, because the decision regarding a candidate CM is not based on "a data processing request received via the data reception unit," as recited by Claim 9, and, further, because the decision is whether to output the candidate as commercial content or not, rather than "whether data processing based on a data processing request...is to be executed," as recited by Claim 9, the rule decision unit 22 of <u>Abe</u> does not teach or suggest a rule decision processing unit as defined by Claim 9.

In sum, the decision made by the rule decision unit 22 is not based on a request, 350*c*, the request at step S470, or the request at step S413, asserted to teach the data processing request as defined by Claim 9. Further, a decision as to whether data processing is to be executed is not made by the rule decision unit 22. Thus, <u>Abe</u> fails to teach or suggest at least the data processing request and the rule decision processing unit as defined by Claim 9.

<u>Freed</u> does not cure the above-discussed deficiencies of <u>Abe</u> with regard to Claim 9 and, further, is not asserted to teach the features of Claim 9 that are deficient in <u>Abe</u>.

Thus, because the combination of <u>Abe</u> and <u>Freed</u> does not teach or suggest every element of Claim 9, Appellant respectfully requests that the rejection of Claim 9 under 35 U.S.C. § 103(a) be withdrawn.

Claims 21 and 27, though differing in scope and statutory class from Claim 9, patentably define over the combination of Abe and Freed for similar reasons as Claim 9. Thus, Appellant respectfully requests that the rejection of Claims 21 and 27 under 35 U.S.C. § 103(a) be withdrawn.

Claims 11 and 12 depend from Claim 9, and Claims 23 and 24 depend from Claim 21. Thus, Claims 11, 12, 23, and 24 patentably define over the combination of Abe and Freed for at least the same reasons as Claims 9 and 21, and, accordingly, Appellant respectfully requests that the rejection of Claims 11, 12, 23, and 24 under 35 U.S.C. § 103(a) be withdrawn.

VIII.   Conclusion

The rejection dated September 26, 2008 fails to establish a *prima facie* case of obviousness. Therefore, a reversal of the Examiner's decision is respectfully requested.

Respectfully submitted,

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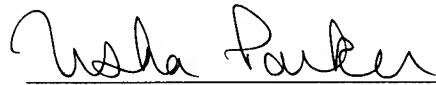
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IX.   Claim Appendix

Claim 9: An information processing apparatus comprising:

a data reception unit;

a rule decision processing unit configured to determine whether data processing based on a data processing request received via the data reception unit is to be executed; and

a data processing unit configured to execute data processing based on the determination of the rule decision processing unit, wherein

the rule decision processing unit is configured to execute determination processing for determining whether or not the processing according to the processing request is to be executed based on a rule deciding condition descriptor, and the rule deciding condition descriptor is determined based on a probability value.

Claim 11: The information processing apparatus according to claim 9, wherein:

said rule deciding condition descriptor is included in a data processing request; and

said rule decision processing unit is configured to generate a random number and to execute determining processing for determining whether or not the processing according to a processing request is to be executed based on a comparison between the generated random number and said rule deciding condition descriptor.

Claim 12: The information processing apparatus according to claim 9, wherein:

said rule deciding condition descriptor is included in a data processing request; and

said rule decision processing unit is configured to perform hash value calculation processing based on the data processing request storing data, and to execute determining processing for determining whether or not the processing according to a processing request is

to be executed based on a comparison between a calculated hash value and a setting value set in its own apparatus in advance.

Claim 21: A data processing method for analyzing a data processing request received via a data reception unit, and for determining whether the data processing request is to be executed, comprising:

a rule decision processing step for determining whether data processing based on the data processing request is to be executed; and

a data processing step for executing data processing based on the determination of the rule decision processing step, wherein

the rule decision processing step determines whether or not the processing according to the processing request is to be executed based on a rule deciding condition descriptor, and the rule deciding condition descriptor is determined based on a probability value.

Claim 23: The data processing method according to claim 21, wherein:

said rule deciding condition descriptor is included in the data processing request; and

said rule decision processing step generates a random number and determines whether or not the processing according to the processing request is to be executed based on a comparison between the generated random number and the said rule deciding condition descriptor.

Claim 24: The data processing method according to claim 21, wherein:

said rule deciding condition descriptor is included in the data processing request; and

said rule decision processing step executes hash value calculation processing based on the data processing request storing data, and determines whether or not processing according

to the processing request is to be executed based on a comparison between a calculated hash value and a setting value set in its own apparatus in advance.

Claim 27: A computer-readable storage medium including a computer program for analyzing a data processing request received via a data reception unit, and for determining whether the data processing request is to be executed, , wherein, the computer program, when executed by a processor, causes the process to perform a method comprising:

a rule decision processing step for determining whether the data processing based on the data processing request is to be executed; and

a data processing step for executing the data processing based on the determination of the rule decision processing step, wherein

the rule decision processing step determines whether or not the processing according to the processing request is to be executed based on a rule deciding condition descriptor, and the rule deciding condition descriptor is determined based on a probability value.

X. Evidence Appendix

NONE

XI.   Related Proceedings Appendix

NONE